

REMARKS

Status of the claims

Claims 1-20 were pending in the instant application with all but claim 17 under active consideration. With this Response, claim 6 has been canceled without prejudice. Claims 1, 7, 8, 15, and 18 have been amended with this submission, and claims 21-27 have been newly added. Upon entry of this paper, therefore, claims 1 and 7-27 will be pending of which claims 1-5, 7-16 and 18-27 will remain under active consideration. Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Support for claim amendments

Claims 1, 15 and 18 have been amended to recite, in part, a “wetting agent.” Support for this amendment may be found through out the as-filed specification and, at least, at page 4, paragraph 0011, and in original claim 6. Similarly, support for new claims 21-27 may be found, at least, in original claims 6 and 1-6, respectively. Hence, Applicants submit that no new matter has been added by these amendments.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Information Disclosure Statement

Applicants thank the Examiner for noting the inadvertent submission of EP 527570. The correct reference will be submitted under separate cover.

The Examiner has also indicated that “Molecular Structure, page 2617 is not readable.” In a telephone conference on February 15, 2007, it was determined that page 2617 was inadvertently submitted and that page 2616, which is listed as cite no. 25 in form 1449 submitted

December 01, 2004 was never received.¹ Applicants have appended the missing page with this Response.

Claim rejections under 35 U.S.C. § 103

Claims 1-16 and 18-20 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over EP 0699392 (“Chung”) or US 6153236 (“Wu”) or US 4537784 (“Percel”) in view of Borsook and Schouten (*see* PTO-892) for the reasons set forth on pages 2 and 3 of the outstanding office action. For the reasons that follow, Applicants respectfully traverse the rejections.

In order to appreciate the instant invention in view of the art, it is important to first appreciate the problems encountered and addressed in the art by the invention. The present invention has solved certain problems that are encountered when coating or encapsulating with *liquid* lactic acid by using *crystalline* (*e.g.*, powdered) lactic acid instead. However, a simple replacement of liquid lactic acid with powdered lactic acid was heretofore not possible, because powdered lactic acid is too hygroscopic to be suitable for encapsulation. It is this problem that has now been solved for the first time by making a crystalline lactic acid particle further containing a wetting agent.²

Now turning to the cited references, it should be apparent that the art does not teach or suggest a crystalline lactic acid particle further containing a wetting agent nor compositions comprising same. Chung describes coating of various “leavening acid cores” with a “barrier material”. The acids of the invention are listed in the second paragraph of page 4. Significantly, of the four *organic* acids listed, *lactic acid is not mentioned*. For the reasons mentioned above, such an “omission” would have been expected, because it was well known that lactic acid powder could not be simply substituted for powders of the above-mentioned organic acids. As a

¹ The Examiner also kindly noted that the missing page 2616 is from “Rompps Chemie-Lexikon” and not “Molecular Structure”.

² The presence of a wetting agent is now recited in the claims as an element of the newly claimed “particle” and compositions comprising the particles.

further matter, Chung does not disclose using a wetting agent in combination with the disclosed acids.

Wu, as well, discloses only the use of *liquid* lactic acid. The specification at col. 4, lines 54-56 explicitly states: “Lactic acid, *being a liquid*, is first applied to a carrier such as calcium lactate and converted to a dry solid form.” (emphasis added)

Percel describes yet another method for using *liquid* lactic acid in a food product. Percel teaches “lactic acid acidulant on a calcium lactate carrier.” Col. 1, lines 9-13. Although immobilized on a carrier, as taught in Wu, the lactic acid is still in the form of a liquid. Further support may be found in col. 4, paras. 1-2, wherein concentrated *solutions* of lactic acid are discussed.

Taken together, it is evident that none of the primary references teach the use of *crystalline* lactic acid and a wetting agent. What is more, the secondary references fail to cure the deficiencies of the primary references. In short, Borsook and Schouten are silent on encapsulation, and in fact only disclose that crystalline lactic acid as such was known in the art. It is emphasized that the present invention is not directed to crystalline lactic acid *per se*, but with a wetting agent, an element also undisclosed in any of the references.

In sum, Applicants submit respectfully that the rejection of claims 1-16 and 18-20 under 35 U.S.C. § 103 has been traversed, and Applicants request respectfully that the rejection of same claims be withdrawn.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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